

APPENDIX 26

Penn State Defendants' Documents in Support of
Motion for Summary Judgment/Statement of Facts

APPENDIX 26

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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AUSTIN T. SCOTT, :
Plaintiff, : NO. 4:09-CV-1989
-vs.- :
THE PENN STATE UNIVERSITY, et al., :
Defendants. :
----- X

Deposition Testimony of DESIREE MINDER

301 Market Street
Lemoyne, PA

December 22, 2010
12:30 p.m.

COPY

ERSA REPORTING
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Philadelphia, PA 19103
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DESIREE MINDER

1 to the police station, are there any conversations; you
2 remember anything happening?

3 A. No.

4 Q. And you went directly to the police station?

5 A. Yes.

6 Q. What happens at the police station?

7 A. When we get there, I was introduced to Lance
8 Marshall and the District Attorney, I think his last
9 name is Madiera.

10 Q. They were already there at that time?

11 A. Yes.

12 Q. They were there when you arrived?

13 A. Yes.

14 Q. About what time is this now?

15 A. I have no idea what time it was. I know it was
16 daylight out.

17 Q. And I know that you don't remember going there,
18 but you can approximate how much time it was from when
19 you left the hospital to when you got there?

20 A. (Witness, shaking head.)

21 Q. Are we talking less than an hour?

22 A. Probably more than an hour. But to me, I don't
23 know for sure.

24 Q. Now, you're going from Mt. Nittany Medical
25 Center to the police department on campus, correct?

DESIREE MINDER

1 A. Correct.

2 Q. I just want to clear up -- you think that may
3 have been more than an hour?

4 A. That I was at the --

5 Q. I thought there was maybe a misunderstanding.
6 From when you leave the hospital to when you get to the
7 police station --

8 A. Oh.

9 Q. -- about how much time do you think --

10 A. I went directly there, there was no stops in
11 between so -- I don't even remember where Mt. Nittany
12 is at. Isn't Mt. Nittany like 15 minutes away, maybe
13 even less?

14 I don't remember. All I know is that --

15 Q. I can't answer for you.

16 MR. NINOSKY: You've answered the question by
17 saying you went directly from Mt. Nittany to the police
18 station, wherever those locations are.

19 A. I went directly there, there was no stops in
20 between.

21 Q. I was just confused because of the hour
22 comment. I wanted to make sure --

23 A. No, I thought that you meant -- sorry.

24 Q. No, that's fine.

25 At the police station, Lance Marshall and

DESIREE MINDER

1 Michael Madiera, they meet you when you walk in; are they
2 the first people you meet there?

3 A. They took me into a room and they were there and
4 they introduced me once I got in there.

5 Q. Who took you in there?

6 A. I think it was -- I don't know for sure.

7 Q. Let me ask you this. Up until this point in
8 time what were your feelings, if any, regarding criminal
9 charges against Austin?

10 A. I was just more concerned for myself and my
11 family. I wasn't even thinking about him. I was just
12 scared.

13 Q. You met with Lance Marshall, Michael Madiera; is
14 there anyone else in the room?

15 A. There was, I don't know who they were. They all
16 introduced themselves to me but I don't know their names.

17 Q. Were they police officers?

18 A. I don't know.

19 Q. Was there anybody else in the room?

20 A. Not that I can remember.

21 Q. I mean, were your friends in the room?

22 A. No.

23 Q. But they were at the police station waiting
24 around somewhere else for you?

25 A. Yes.

DESIREE MINDER

1 Q. What do you remember as the first thing that
2 Lance Marshall and Michael Mадiera said to you?

3 A. Just their introduction and pretty much jumped
4 right into it and said that, you know, they just want to
5 take care of this as soon as possible and just started
6 asking questions.

7 They just said that they're going to go through
8 everything, they want to know all the events that
9 happened up to the point, and just basically asked me
10 similar questions that you asked me today.

11 Q. Is it just Lance Marshall and Michael Mадiera
12 and --

13 A. Yeah, and I guess there might have been another
14 two people in the room. There might have been some other
15 people.

16 Q. Were they taking notes?

17 A. I think so.

18 MR. HORNE: Object to the form of the
19 question. Was who taking notes?

20 MR. LICHTMAN: The people in the room.

21 Q. Were the people in the room taking notes?

22 A. Yes.

23 Q. And what do you remember telling them?

24 A. Just the gist of the story, pretty much the
25 same thing I told you today. I went through the whole

DESIREE MINDER

1 time line. My times might have been more accurate
2 there and maybe some of the things were more detailed,
3 but I just went from beginning to end through the whole
4 thing.

5 Q. Do you remember any of the specific questions
6 that they asked you?

7 A. No.

8 MR. NINOSKY: And I just want to make sure
9 it's clear because it sounds as if you're certain that
10 Lance Marshall was there, you're certain that
11 Mr. Madiera was there, correct?

12 THE WITNESS: Yes. I don't know if Madiera
13 was there the entire time.

14 MR. NINOSKY: Are there other people there or
15 not?

16 THE WITNESS: Yes, I think so.

17 MR. NINOSKY: I think to clarify then, he's
18 saying they, did they ask questions. If you could try to
19 say who is asking the questions.

20 Is Mr. Madiera asking the questions, is it
21 Mr. Marshall, was that it? If you could, please --

22 MR. LICHTMAN: Absolutely.

23 MR. NINOSKY: -- so it's clear.

24 BY MR. LICHTMAN:

25 Q. Out of the people that you remember in the

DESIREE MINDER

1 room, did everybody ask you questions?

2 A. For the most part I remember Lance Marshall
3 asking the questions. And they really let me speak the
4 most, you know. But he was mostly asking me the
5 questions.

6 I can't really remember anybody else asking
7 questions. It was more -- I thought they were more
8 listening to me.

9 Q. Was Lance Marshall taking notes?

10 A. I don't remember.

11 Q. Were there -- and I just want to -- so that
12 we just have kind of a closed environment here, does
13 anybody come in or leave the room during this period of
14 time?

15 A. Not that I can remember.

16 Q. Did you tell Lance Marshall or anybody else in
17 this room about the Christopher Burgan incident?

18 A. Yes.

19 Q. Did you tell them the outcome of that criminal
20 trial and investigation?

21 A. I can't remember if I exactly did, I'm sure I
22 did. That might have been a question that they even
23 asked me. But I'm pretty sure I told them the outcome.

24 Q. Okay, I just want to -- I want to ask again
25 because in that answer we had I'm not sure, I'm sure and

DESIREE MINDER

1 I'm pretty sure so --

2 A. I'm pretty sure I did but I can't say for sure.

3 Q. If you told them about the Christopher Borgan
4 situation, would you have told them about the outcome?

5 A. Yes.

6 MR. NINOSKY: Object to the form.

7 Q. Did you tell the police that you were on top of
8 Austin? I'm sorry, did you tell Lance Marshall that you
9 were on top of Austin?

10 A. I told them everything.

11 Q. Did you tell them that you kissed Austin good
12 night?

13 A. Yes.

14 Q. And did you tell him that you hadn't said no or
15 stop completely?

16 A. I told them about at the beginning when I was
17 saying no. And yes, to answer your question, I think
18 that would be yes.

19 Q. So you explained that you had only been able to
20 get out a portion of the word no and you weren't ever
21 able to say no?

22 MR. NINOSKY: Object to the form because I'm not
23 sure that's what she said. She can't recall exactly if
24 she finished it or not was what her testimony was.

25 A. I can't exactly remember what I told them.

DESIREE MINDER

1 you can clear this up for me. The first thing you say --
2 do you remember what you said in the phone intercept?

3 A. No.

4 Q. Do you remember saying that there was a rumor
5 that Austin was video-taping girls on campus, do you
6 remember that?

7 A. No, I don't remember that. I don't even
8 remember that being brought up at all.

9
10 (Deposition Exhibit No.

11 Minder 8-A, phone excerpt transcript,
12 Marked for identification.)

13

14 BY MR. LICHTMAN:

15 Q. So now we have in front of you what's beemarked
16 as Exhibit No. Minder 8, and this is a
17 transcript of the phone intercept that we were talking
18 about before.

19 Now, I see here -- and tell me -- let me get
20 the line here. Beginning at line 6, Miss Minder, so
21 there's a rumor going around? Mr. Scott replies, what
22 rumor?

23 Line 9. That you like to videotape the girls
24 that you sleep with or the girls you sleep with.

25 Where did that come from?

DESIREE MINDER

1 A. That was told to -- I was told to ask that by
2 Lance Marshall.

3 Q. Okay. Any reason, do you know why he asked
4 you, did he explain why?

5 A. No, no.

6 Q. Had you heard of any such rumor?

7 A. No.

8 Q. Now, there's also an indication here that
9 there may be a laugh on the tape, and to be fair that's
10 been handwritten in, that's not transcribed.

11 Q. Is it your recollection that you were
12 laughing a lot during the tape?

13 A. No.

14 MR. NINOSKY: Well, object to the
15 characterization of a lot when there's one reference
16 to, quote, laugh.

17 But go ahead.

18 Q. Do you remember laughing at all during that
19 phone intercept?

20 A. No.

21 MR. NINOSKY: Who made the transcript of this by
22 the way?

23 MR. LICHTMAN: Slifer Veritext is the
24 transcription company.

25 So I am going to --

DESIREE MINDER

1 MR. NINOSKY: You guys had the transcription
2 prepared or was it --

3 MR. LICHTMAN: I don't know. I don't know
4 who had it transcribed, but I do know that we can
5 contact Slifer Veritext and see if they have another
6 copy of it.

7 MR. NINOSKY: Fair enough.

8 BY MR. LICHTMAN:

9 Q. Just to get a little bit more detail, I am
10 wondering how Lance asked you to say that. How did
11 that come up?

12 A. It was just in the conversation beforehand. He
13 just told me -- he just told me to ask that. He said
14 something about that Austin videotapes girls that he
15 sleeps with, that's one of the questions that we want you
16 to ask him.

17 Q. Okay. What other questions did he ask you to
18 ask Austin?

19 A. Pretty much everything that was on here. I
20 didn't -- Lance pretty much handled everything I
21 communicated because I was frozen. I didn't know what to
22 say. Like I didn't even want to talk to him so --

23 Q. Did the unidentified police officer in the room
24 say anything during this period of time?

25 A. Not that I can remember. I mostly remember

DESIREE MINDER

1 Lance talking to me.

2 Q. So that phone intercept ends, what happens
3 next?

4 A. Then I get a text message from Austin.

5 Q. Do you remember what the text message said?

6 A. Today, no.

7 Q. Do you remember the reaction of Lance Marshall
8 or the police officer to the text message?

9 A. No, I just remember freaking out. And then I
10 just pretty much gave him my phone.

11 Q. You told them that there was a text message
12 that came in from Austin?

13 A. Yes.

14 Q. At that point do you remember the police
15 officer saying anything to you?

16 A. I think they may have made me -- they told me
17 what to reply to one of the text messages.

18 Q. When you say they, do you remember who told
19 you?

20 A. Lance, I'm sorry, Lance.

21 Q. Now, you said they. Was it Lance by himself or
22 was it --

23 A. It was Lance.

24 Q. Do you remember what he told you to reply?

25 A. No.

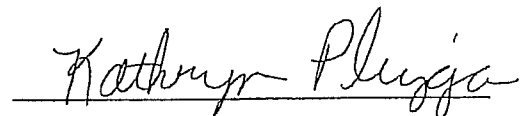
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C E R T I F I C A T E

I, Kathryn Plizga, the officer before whom the within deposition (s) was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness;

That the proceeding is herein recorded fully and accurately;

That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel by the parties hereto, or financially interested in this action.

A handwritten signature in cursive script, reading "Kathryn Plizga", is written over a horizontal line.

Kathryn Plizga, Reporter
Notary Public in and for
the Commonwealth of
Pennsylvania

My commission expires: April 5, 2111